

Message Text

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ACTION L-03

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C O N F I D E N T I A L RABAT 3442

FOR A/SY/SAS; L; NEA/AFN

E.O. 11652: XGDS-1
TAGS: ASEC MO
SUBJECT: RABAT - MURDER AMCIT

REF: (A) STATE 145860, (B) STATE 145427

1. EMBOFF CALLED ON MFA LEGAL AFFAIRS DIRECTOR MUSTAPHA GHARBI TO CONVEY POINTS REFTEL A. INFORMAL DISCUSSION OF VARIOUS ASPECTS OF IMMUNITY QUESTION FOLLOWED. GHARBI STRESSED THAT HE HAD NOT PREJUDGED HIS EVENTUAL RECOMMENDATION TO HIS MINISTER. HE DID REMARK THAT OUR LEGAL ARGUMENT TO DATE HAD NOT BEEN VERY CONVINCING.

2. ON THE VIENNA CONVENTION, GHARBI NOTED THAT HIS GOVERNMENT HAD ADHERED IN 1968, STATING ITS RESERVATION AT THE TIME. THE U.S. OBJECTION TO MOROCCO'S (AND OTHER COUNTRIES) RESERVATION HAD NOT BEEN LODGED UNTIL 1974. THIS WAS TOO LATE, HE FELT. HE SAID HE AGREED COMPLETELY ON THE POINT THAT THE CONVENTION MERELY CODIFIED THE EXISTING RULES. NEVERTHELESS, THE 1965 PRECEDENT CONCERNING THE ASST. NAVAL ATTACHE HAD IN POINT OF FACT PREDATED THE GOM'S ADHERENCE TO THE CONVENTION. HE WISHED MORE INFORMATION ON THE CASE, SPECIFICALLY WONDERING WHETHER THE ASST. NAVAL ATTACHE HAD BEEN IN WORK-RELATED ACTIVITY WHEN THE ACT OCCURRED AND, MOST IMPORTANTLY, WHETHER HE WAS SUBSEQUENTLY PROSECUTED
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UNDER U.S. LAW. AT THIS POINT, HE NOTED IN PASSING PARAGRAPH 2 OF ARTICLE 37 OF THE CONVENTION WHICH STATED THAT IMMUNITY DID NOT EXTEND TO ACTS PERFORMED OUTSIDE THE COURSE OF OFFICIAL DUTY.

3. HE TOOK NOTE OF OUR POINT THAT MSG'S HAVE BEEN ACCEPTED ELSEWHERE AS MEMBERS OF ADMINISTRATIVE AND TECHNICAL STAFF

AND HENCE ENJOYED IMMUNITY. HE WAS ALSO TOLD THAT WE UNAWARE OF ANY PREVIOUS CRIMINAL PROSECUTION OF MSGS. GHARBI SAID HE UNAWARE OF ANY BILATERAL ACCORD, BUT THOUGHT THAT IF ANY EXISTED IT WOULD PROBABLY NOT ADDRESS IMMUNITY QUESTION. HE REQUESTED ANY FURTHER INFORMATION WE COULD PROVIDE HIM ON THIS COUNT.

4. GHARBI SAID HIS MAIN PROBLEM WAS THE GOM'S RESERVATION TO THE CONVENTION. IT APPEARED THAT SURRENDERING JURISDICTION IN THIS CASE MIGHT SET AN IMPORTANT PRECEDENT IN THE GOM'S DEALINGS WITH DIPLOMATIC MISSIONS. HE NOTED THAT THE POLITICAL CLIMATE OF 1978 WAS VERY DIFFERENT FROM THAT OF 1965. HIS MINISTER WAS A POLITICAL MAN, THERE WAS A PARLIAMENT, AND THERE WAS A LIVELY PRESS. MOROCCO ALSO HAD ITS JUDICIAL BRANCH, WHICH WAS INDEPENDENT UNDER THE CONSTITUTION. THE MEMORY OF CAPITULATION (THE POLICY OF SURRENDERING CONSULAR JURISDICTION OF CERTAIN MOROCCANS TO FOREIGN NATIONS UNDER THE PROTECTORATE) WAS TOO FRESH IN MOROCCAN MINDS TO BE TAKEN LIGHTLY. SPEAKING PERSONALLY, HE FELT THAT THE CASE COULD BE PURSUED IN MOROCCAN COURTS TO EVERYONE'S SATISFACTION. THE TRIAL COULD BE HELD IN CAMERA, FOREIGN LAWYERS COULD REPRESENT THE ACCUSED, AND THE SENTENCE WOULD BE APPROPRIATE. HE HOPED IT WOULD NOT BECOME A BIG THING BETWEEN OUR TWO COUNTRIES. GHARBI ASKED WHETHER THE SUSPECT WAS LIABLE TO BE PROSECUTED UNDER U.S. LAW.
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5. EMBOFF SAID HE COULD GIVE FULL ASSURANCE THAT USG HAD EVERY INTENTION OF PROSECUTING THE SUSPECT. THERE APPEARED TO BE NO WAY, HOWEVER, THAT THE AFFAIR COULD NOT ASSUME IMPORTANCE IN WASHINGTON. GHARBI ACKNOWLEDGED THE NEED TO WORK THINGS OUT IN THE SPIRIT OF OUR FRIENDLY RELATIONS, BUT POINTED OUT THAT HE PERSONALLY WAS ONLY SEIZED WITH RENDERING A LEGAL OPINION. HE ACKNOWLEDGED EMBOFF'S EXPRESSION OF HOPE THAT MATTER COULD PROCEED EXPEDITIOUSLY.
ANDERSON

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